Indiana Court Times

Supreme Court, Division of State Court Administration
www.state.in.gov/judiciary

Volume 14 | Spring/Summer 2005 | Number 1

Indiana's Judicial Officers Receive Long Sought Compensation Adjustment

Governor Mitch Daniels on May 5 signed legislation granting a significant pay raise for Indiana's judicial officers and prosecutors. The bill signing ceremony capped a nearly decade-long effort by hundreds of trial judges and advocates for enhanced judicial compensation, which had remained stagnant for years.

The signing followed an intensive and laborious effort by the leadership of the Indiana Judges Association and the Indiana State Bar Association, coupled with grass roots education that connected hundreds of judges with their legislators via emails, telephone calls and letters.

Gov. Daniels signed two measures that are effective on July 1, 2005 and will have a significant impact on the Indiana bench. It will undoubtedly boost the morale of state jurists who have suffered from economic backsliding since they last received a raise.

Senate Enrolled Act 363 increases the base salary for the trial and appellate court judges and also provides pay raises to judicial officers whenever all other state employees receive compensation increases. Typically those increases, when granted, take effect around the start of the calendar year. House Enrolled Act 1113 provides the funding mechanism for the salary adjustments which will be paid for with a court filing fee increase of $15 in most cases and $10 in small claims cases.

"The measures signed by the Governor this spring reflected untold hours of work, sweat and shoe leather by the leaders of the Judges Association and the many friends who supported increased compensation for Indiana's judiciary. It was never certain that the measures would pass and there were a couple of unexpected hurdles along the way. But our people stuck with it and brought home a significant pay package. I am grateful for the hard work of so many people," said Chief Justice Randall T. Shepard.

Under the new legislation, the annual salary for trial judges moves from $90,000 to $110,500, an increase of 23 percent. The annual salary for Court of Appeals judges moves from $110,000 to $129,800, an increase of 18 percent. The annual salary for Supreme Court Justices judges moves from $115,000 to $133,600, an increase of 17 percent.

Senate sponsors of Senate Enrolled Act 363 were: John Broden (D-South Bend), J. Murray Clark (R-Indianapolis), Anita Bowser (D-Michigan City), David Long (R-Fort Wayne), Lindel Hume (D-Princeton), and Robert Meeks (R-LaGrange). And, the House sponsors were: Ralph Foley (R-Martinsville), Bob Kuzman (D-Crown Point), and Kathy Richardson (R-Noblesville).

House sponsors of House Enrolled Act 1113 were: Kathy Richardson (R-Noblesville), John Ulmer (R-Goshen), Bob Kuzman (D-Crown Point), and Ralph Foley (R-Martinsville). The Senate sponsor was Connie Lawson (R-Danville).

Both measures passed the legislature with strong bi-partisan support.

The salary increases are significant, but they are actually lower than provided for in the initial pay raise legislation filed at the beginning of the session. Those bills included higher salary levels that were based on the recommendations of the legislatively created Public Officers Compensation Advisory Committee.

The Committee had suggested that trial judges receive a base salary of $121,122, that Court of Appeals and Tax Court judges receive $139,951, and, that Supreme Court justices receive $143,195.

Those amounts were trimmed as the pay raise measures moved through the legislative process. Efforts by the Judges Association and their allies, however, were able to preserve and continue the health care adjustments that judges had received, along with other state employees, over the past three years.

Traditionally, Indiana has ranked near, or at the bottom of, most state-by-state judicial salary listings. But the new legislation provides some dramatic upward movement, especially when the health care adjustments are included with the new salary levels.

For trial judges, Indiana moves to 22nd place from 48th place, just behind South Carolina; for intermediate appellate courts, Indiana moves to 10th place from 31st, just behind Pennsylvania; and, for Supreme Court justices, Indiana moves to 14th place from 34th, just behind Connecticut.

David Remondini

JTAC Report: Case Management System Work Back Kicking into High Gear

The Indiana Supreme Court and its Judicial Technology and Automation Committee continue to work to obtain a 21st century case management system for Indiana. The envisioned system will serve the unique needs of Indiana courts and connect them to each other. Courts will be able to seamlessly and expeditiously exchange information with state agencies, such as the State Police and the Bureau of Motor Vehicles. And, eventually, the public will have immediate access to court information at their convenience – a mouse click away from their home or office.

In the past several years, JTAC has had to make many decisions as work began to provide Indiana courts with a 21st Century Case Management system that would connect courts in all 92 counties. We actively solicited input from judges, clerks, and court personnel around the state and began project work.

So, where are we now? As previously reported, there was an interruption in work on the project late last year and early this year while we assessed previously unrecognized difficulties. Many of the issues related to automating the clerks' financial processes. JTAC is committed to providing a system that is cost-effective, easy-to-use, saves court personnel time, provides accurate information, and provides connectivity and standardization for all Indiana courts. We will not offer this case management system to Indiana's courts and clerks unless and until we meet those high standards.

Work on the "CMS" has resumed in earnest and project activity includes:

- JTAC has engaged Crowe Chizek, an Indiana-based consulting firm, to provide additional technical expertise on the project.
- A review is being conducted of information previously gathered from the more than 300 court representatives from around the state who attended design and listening sessions to ensure that new work meets the needs of all end users.
- Changes to the CMS include the ability to simply download it to a PC instead of having a technician go onsite to install it on each individual computer.
- A new Governing Board structure includes more clerks and judges, with representation from different areas of the state.
- Previous functions planned for inclusion in the system will be reconfirmed in light of business needs or recent technology changes.
- The highest raking officers of Computer Associates, the project's principal vendor, have come to Indiana and officials are working with JTAC to provide a high quality product that meets our specific needs.

Much work has been done on the CMS project. It has been, and must continue to be, a team effort at all levels. In particular, JTAC has tried at every step of the process to recognize the indispensable role that Clerks play in the Indiana court system and to involve them integrally in the project. The Association of Clerks of Circuit Courts of Indiana participated in the procurement process in which Computer Associates was hired as the principal vendor. A former circuit court clerk has been working full time with the JTAC staff to provide in-house subject matter expertise. In fact, the project's interruption was necessary in order to be sure that the clerks' financial processes worked correctly. This team effort will continue.

The Supreme Court takes its contractual commitments very seriously and will not abandon its obligations. Progress has not come at the speed we had hoped, but we must ensure the project is all that it should be.

Other JTAC Assistance

While the CMS project is among JTAC's highest priorities, there is much other work being done to help county courts operate more effectively.

Many counties have taken advantage of JTAC's assistance to establish basic e-mail service and Internet access. JTAC also provides basic web services for clerks including the creation of a web page for each of Indiana's 92 county courts. The creation of web pages was critical because Trial Rule 81 required the on-line posting of all local court rules. As part of this project, JTAC staff also assisted courts and clerks in posting other helpful information.

LexisNexis services are provided free of charge to any circuit court clerk or judicial officers of courts of record who request this service. And JTAC will continue to provide computer training classes as requested

continued on page 3

JTAC, continued from page 3

during state conferences for clerks and judges.

Keeping up with technology advancements is a court priority and JTAC is committed to giving staff the training they need. JTAC has partnered with Ivy Tech State College for several years to provide technology training for judicial employees and clerk staff at no cost to the counties. To date, 1,228 people have enrolled in one of the 122 courses offered, receiving 32,943.5 hours of training.

JTAC has partnered with Dell Computer Corporation to allow Indiana government employees to buy Dell computers for their internal business operations at a reduced cost.

Whenever possible, JTAC has also acquired "gently used" computers, refurbished them and distributed them to judicial staff on a "first come, first served" basis.

Mary DePrez

Indiana's First Class of Certified Interpreters Sworn In

The first class of court interpreters to pass all phases of Indiana's new court interpreter certification program took oaths on March 23, 2005 in the Indiana Supreme Court chambers. Chief Justice Randall Shepard administered the oath in Spanish to the five interpreters: Christina Courtright, Lourdes Daily, Emily Keirns, Claudia Samulowitz and Diana Vegas.

At the ceremony, Rafael Ramirez, co-chair of the Indiana State Bar Association Latino Affairs Committee, emphasized the significance of the accomplishment of the candidates. "It represents just one more step up the ladder in our ability to deliver professional services to the community, especially the Latino community."

Christina Courtright, Lourdes Daily, Claudia Samulowitz, Chief Justice Randall T. Shepard, Diana Vegas, Emily Keirns, Myra Selby

Launched in 2003, Indiana's certification program was created in response to a recommendation by the Indiana Supreme Court's Commission on Race and Gender Fairness. In studies of Indiana courts, the commission found courts relying upon litigants to recruit their own interpreters. The commission heard numerous reports of litigant's relatives, or other individuals untrained in the law, being used as interpreters. Indiana citizens, legal professionals and judges were clearly frustrated with the lack of a neutral court interpreter system in the state.

Indiana's new certification process, while providing courts with neutral interpreters, is also designed to give Indiana courtrooms access to high quality Spanish-speaking interpreters. Indiana's rigorous program, based upon national standards, is a four-part process, which includes both a written and oral exam. Indiana's current passage rate, akin to the national average, is a little over 10 percent.

Chief Justice Shepard, in his opening remarks at the ceremony, stressed that while the interpreter program will make Indiana's courts more friendly and accessible, this first certification class hardly marks the end of all such efforts. Rather, this certification class marks "the end of the beginning for a road much yet to be traveled," Shepard stated. Former Indiana Supreme Court Justice, and current chair of the Court's Race and Gender Commission, Myra Selby, echoed this sentiment, indicating that the Commission is "determined that the court interpreter program will grow and thrive" in order to further increase access to the courts.

Adrienne Meiring
Photo taken by Greta Scrodo

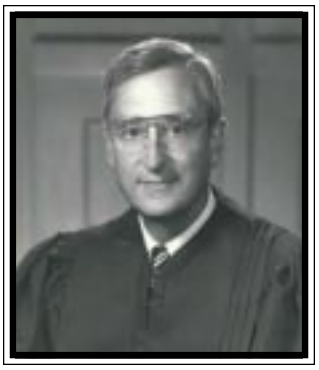
Justice Theodore R. "Ted" Boehm Receives Peck Award

Indiana Supreme Court Justice Theodore R. "Ted" Boehm received the prestigious David Peck Medal for Eminence in the Law at a ceremony at Wabash College on March 23, 2005.

The 32nd Annual David W. Peck Awards Banquet, sponsored by the Wabash College Pre-Law Society, also featured remarks by Justice Boehm on his experience as a law clerk for the Warren Court.

The Peck Medal is given annually to an outstanding practitioner of the law in honor of the late Judge David W. Peck, a Wabash alumnus, who rose to become Presiding Justice of the Appellate Division of the New York State Supreme Court, a position he held from 1947 to 1957

Justice Boehm was appointed as an Associate Justice on Aug. 7, 1996. He was raised in Indianapolis, received his A.B. from Brown University in 1960, summa cum laude, and graduated magna cum laude in 1963 from Harvard Law School, where he was an editor of the Harvard Law Review.



He clerked for Chief Justice Earl Warren of the United States Supreme Court before joining the Indianapolis firm of Baker & Daniels in 1964. In 1988 he joined General Electric as General Counsel of GE Appliances. One year later he was named Vice President and General Counsel of GE Aircraft Engines. In 1991 he joined Eli Lilly & Company as Deputy General Counsel before returning to Baker & Daniels in 1995.

Justice Boehm's colleague, Chief Justice Randall T. Shepard received the Peck Medal in 2002.

Dave Remondini

Cathy Springer Recognized for Role in the National Leadership Institute in Judicial Education

Cathy Springer has been asked to be on the faculty for the Leadership Institute in Judicial Education which will be held on June 14-19, 2005 at the University of Memphis. Indiana sent a team to the Leadership Institute for its Basic Institute in 1998 and Advanced Institute in 1999. The team consisted of Nancy Vaidik, Bill Hughes, Bruce Embrey, Cathy Springer and Vicki Davis. It proved to be quite instrumental in the continued development and enhancement of judicial education in Indiana.

During the Leadership's Institute's fifteen-year history, over 450 judges, judicial educators, court administrators, and other court personnel from 44 states have attended the annual six-day intensive program, along with the District of Columbia, one U.S. territory and seven national organizations that provide continuing professional education for judges: the American Bar Association's Judicial Division, the Justice Management Institute, the National Association for Court Management, the National Center for State Courts, the National Association of Women Judges, the National Judicial College, and the Center for Effective Public Policy. An estimated 3000 additional persons have attended their on-site Institutes (we had one in Indiana!) or other programs.

The Leadership Institute has been honored with many awards including the 1999 SJI Howell Heflin Award, the 2000 NCSC Warren Burger Award, and the 2001 ALI-ABA Harrison Tweed Award. As you can see, it is well-respected in our field!

We're very proud that Cathy has been recognized in this way—she does such a great job for the judges in Indiana, it's nice to know that she is valued nationally!

Jane Seigel

Electronic Posting of Court Records: TR 77 (K) Requires Supreme Court Approval

Trial Rule 77(K) requires that courts and clerks wishing to post information to the Internet seek approval from the Indiana Supreme Court, Division of State Court Administration, prior to posting that information.

This may include posting case Chronological Case Summaries, Orders, court calendars, or so-called "static" information about courts such as hours, parking information, and general directions to the courthouse. Trial Rule 77(K) specifically provides that:

> *The clerk, with the consent of a majority of the judges in the courts of record, may make court records, including but not limited to the chronological case summary, record of judgments and orders, index, and case file, available to the public through remote electronic access such as the Internet or other electronic method. The records to be posted, the specific information that is to be included, its format, pricing structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Division of State Court Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to applicable laws regarding confidentiality.*

Standard application and renewal procedures for courts and clerks wishing to post their court's information to the Internet are available on the Supreme Court's website at http://www.in.gov/judiciary/admin/. This form must be completed and sent to the Division on or before the expiration of any prior approval. For courts and clerks that have never posted information to the Internet, the form must be completed and approval received before any information is posted.

The following courts have been authorized pursuant to TR 77 (K) to post court information on the internet:

Bartholomew
Brown
Clinton
Daviess
Delaware
Elkhart
Floyd
Grant
Hamilton
Henry
Howard
Jay
Johnson
Lake
Madison
Marion
Marshall
Miami
Monroe
Montgomery
Putnam
Randolph
Spencer
Sullivan
Vigo
Wabash
Wayne

Also:

Gas City
Muncie City
Union City

Courts and clerks are encouraged through Administrative Rule 9(E) to make information available electronically, and posting to the Internet is one way in which to accomplish this goal. Making information available electronically can create efficiencies for the trial court system because attorneys, litigants, and members of the general public can access information as needed without calling the clerk or the court. Electronic information also promotes public interest in the judicial system.

For more information about the provisions of Trial Rule 77(K), or to obtain more information about posting information to the Internet, contact Ron Miller at the Division of State Court Administration at rmiller@courts.state.in.us, or by telephone at (317) 232-2542.

Ron Miller

Indiana's Local Court Rules: A Work in Progress

In the early 1990's, pursuant to federal legislation, all federal trial courts revised their local rules. The legislation required that these rules be numbered consistent with the Rules of Trial Procedure making it easier for attorneys who practiced in many different courts to find and, therefore, follow these rules. The practice of law in Indiana has changed over the years and it is now commonplace for attorneys to appear in courts other than in their home county, or even the old venue counties. But the ability to locate local rules or standing orders is often difficult.

With this in mind, Chief Justice Shepard authorized the establishment of a Task Force to make recommendations on the numbering, promulgation, and maintenance of local rules, in Indiana. Because of the increasing use of computers and readily available information, the project was "a natural." In his 2005 State of the Judiciary speech, Chief Justice Shepard remarked, "For most of Indiana history, we communicated largely by tacking rules up on courthouse bulletin boards. But beginning this year rules adopted for the operation of local courts will be posted on the Internet and follow a uniform format so that citizens and lawyers who travel outside their home counties can have a fighting chance at finding and understanding them."

A number of years ago, the Supreme Court revised how cases would be numbered so that much could be learned just from the number assigned to that case. Although it seemed like a monumental undertaking, I do not believe anyone would doubt how much it has aided in case management. I also believe that the same will be true, in future years, of the local rule-renumbering project.

It is important to note that the requirements for local rules do not mandate that a county have any local rules beyond the few that have been specifically ordered by the Supreme Court; namely: judge selection in civil cases pursuant to TR 79, criminal case assignment and selection of successor judges pursuant to Criminal Rule 2.2, court reporter services pursuant to Administrative Rule 15, case reallocation pursuant to Supreme Court Order, and jury requirements pursuant to Jury Rule 4. And, there is no intent to require a uniform set of local rules. Trial Rule 81, and its Schedule and Format for implementation of a county's local rules, is not complicated, but as with any new rule, there may be questions and even a wrinkle or two. Lilia Judson and Jim Maguire of the Division of State Court Administration, Senior Judges John Kellam and Rich Payne, and I stand ready to provide whatever assistance a county may need.

The new numbering system and compliance with the new requirements must be completed by 01 January 2007. So, while it is hoped that each county will undertake this project expeditiously, there is no need to rush. However, it is past the time limit to submit your local rules to the Division. We have received and posted rules from 50 of our counties. Please visit our web site at www.in.gov/judiciary/rules/local for a look at these posted rules. If you have not submitted your local rules to us please do so and send them in digital format to localrules@courts.state.in.us. If your local rules are not available in digital format, send them to the Division of State Court Administration in hard copy and they will scan it into digital form.

Trial Rule 81 and it's accompany order sets out the procedures for noticing rule changes, receiving comments, and posting the final changes before the effective date. It also allows for deviations in the schedule in situations necessary for good cause or in specific cases where an exception is warranted, (note- this is not intended to be a way to avoid compliance.) The local rules will be numbered to follow State Level rules for ease of use. No longer will there be Standing Orders. All courts of record in each county will have one set of uniform local rules, with only limited exceptions for geographical nuances. And all rules will be posted on the web as well as in Courthouses.

While this seems to be a monumental task, the results will be beneficial to litigants, attorneys and the courts. Remember, help is available. Together we can make this change for the betterment of our judicial system.

Judge Margret Robb

Implementing the New Judicial Salaries Fee

When, and in which cases, should courts and clerks begin charging the new "judicial salaries fee" enacted House Enrolled Act 1113 in the 2005 Indiana General Assembly?

The fee is created in a new code section, Indiana Code § 33-37-5-26, and will be used to pay for the judicial and prosecutor salary increases enacted by 2005 Senate Enrolled Act 363.

Civil Cases

For all cases except small claims, the fee will initially be fifteen dollars ($15.00) beginning July 1, 2005. It will go up a dollar per year on July 1 of each year through 2010, when it will reach a maximum of twenty dollars ($20.00). In small claims cases, the fee will start at ten dollars ($10.00) on July 1, 2005, and it will go up by a dollar a year until it reaches its statutory ceiling of fifteen dollars ($15.00) on July 1, 2010.

The fee must be collected at the time of case filing on or after July 1, 2005 in all actions, other than criminal prosecutions or infraction or ordinance violation cases.

Criminal Cases

For crimes, the fee is to be collected if the defendant is convicted on or after July 1, 2005, or is "required to pay a pretrial diversion fee" on or after July 1, 2005. Thus, the fee may be imposed if the crime was committed before July 1, 2005, as long as the conviction is on or after that date.

Infractions and Ordinance Violations

In infraction or ordinance cases, the fee is to be imposed if the defendant, on or after July 1, is found to have violated an infraction or ordinance. The fee must be imposed on defendants who committed their violations before July 1, 2005 if the judicial finding of a violation occurred on or after July 1.

Some criminal defendants might object to the fee if their offenses were committed before the fee statute went into effect. Those defendants might object, based on the constitutional rule against *ex post facto* laws, contending that the fee increase is a punishment that was not in effect at the time of the crime. It appears that these arguments will not succeed. An Indiana *ex post facto* case held that the document storage and automated record fees could constitutionally be imposed on defendants whose crimes had been committed before the fee statutes went into effect. *Hayden v. State*, 771 N.E.2d 100 (Ind. Ct. App. 2002) The appellate court held that the fees at issue in that case served no deterrent or punitive function, and were applied in both civil and criminal actions for the remedial (procedural) purpose of sustaining important court functions. The judicial salaries fee, like the document storage and automated record fees, is not punitive and is meant to sustain the court system.

A defendant might also object that the statute was not intended to apply if the crime, infraction, or ordinance violation was committed before the effective date. However, this argument runs afoul of the general rules for legislative interpretation. The basic rule is that legislation applies prospectively if it does not contain an express legislative applicability section. *Martin v. State*, 774 N.E.2d 43, 46 (Ind. 2002). Statutory changes that are procedural in nature (as were the document storage and automated record fees in *Hayden v. State*, above) without substantive impact are "applied to all cases pending and subsequent to [the changes'] effective date." *McGill v. Muddy Fork of Silver Creek Watershed Conservancy District,* 375 N.E.2d 365, 370 (Ind. Ct. App. 1977). And, "'statutes changing remedies or procedure generally affect future steps in pending suits.'" *Id.* Thus, under the general rule, the new fee applies to any criminal, infraction, or ordinance case in which judgment has yet to be entered as of July 1, 2005. In such cases the procedural "step" in the statute – the point at which the fee is to be collected (e.g., at conviction or at the point of a finding the violation was committed) - will not have occurred until after the new statute has gone into effect.

SUMMARY:

Type of Case--When to Impose Fee

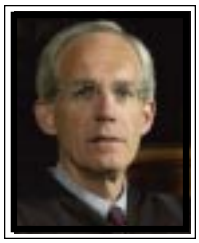
Civil—At filing on or after July 1, 2005

Criminal—Upon conviction on or after July 1, 2005 or when order to pay pretrial diversion fee is entered on or after July 1, 2005.

Infraction or Ordinance Violation—When defendant is found on or after July 1, 2005 to have violated an infraction or ordinance

Mike McMahon

Justice Sullivan and Executive Director Judson Receive Appreciation Awards



Sullivan

The Marion County Criminal Justice Planning Council gave its first-ever appreciation awards May 23, honoring Supreme Court Justice Frank Sullivan Jr. and Lilia Judson, Executive Director of State Court Administration for their work to help county courts enhance the use of technology. The council is composed of elected criminal and civil justice officials who collaborate to identify needs and solutions in the criminal justice system.

"The Supreme Court has bent over backwards for us," said council chair Judge Cale Bradford. "Marion County has had no better friend."

Bradford thanked Sullivan for the Supreme Court's leadership in providing the county such assistance as LexisNexis access, technology training for court staff at Ivy Tech, and a digital dashboard to monitor jail overcrowding.

Sullivan provided members of the council with a progress update on the statewide Case Management System project and said there continues to be great cooperation and collaboration with Marion County court and clerk's staff.

Judson

While there was an interruption in CMS project work, Sullivan reported that work is again at full speed.

"I think all involved with the case management system will tell you that there is a renewed sense of purpose and excitement about the project these days. Advancements in technology since the start of the project give us certain opportunities for efficiencies going forward that we did not have when we started," he said.

The CMS system will link county courts so they may share critical information with each other and appropriate state agencies. It will also provide the public with easy access to court records and activities without requiring a trip to the courthouse.

New Staff at the Division

Michael J. Murphy has joined the Division as Staff Attorney to the Public Defender Commission. A graduate of Purdue University and Indiana University School of Law in Indianapolis, Mike comes to us after seven years with the Marion County Public Defender Agency and more than twenty years experience in a variety of business environments. While assisting the Commission in maintaining standards for indigent defense and monitoring the reimbursement program established under the Public Defense Fund, Mike will also be spending significant time throughout the State as the Commission liaison to the individual counties.

Mary DePrez has accepted a new position with the Indiana Supreme Court Judicial Technology and Automation Committee (JTAC) as Director and Counsel and will be directing development of a statewide case management system (CMS) for trial courts.

Ms. DePrez received her B.A. from Indiana University (magna cum laude) and her J.D. from Indiana University School of Law in Indianapolis. She served as a superior court judge in Shelby County and has extensive experience in Indiana State Government. Beyond her most recent position as Bureau of Motor Vehicles Commissioner, where she implemented many positive changes in the agency's operations - including Saturday hours - Ms. DePrez has also served as chairperson of the Alcohol and Tobacco Commission and special Counsel to the Secretary of Indiana's Family and Social Services Agency .

Colleen O'Brien holds a bachelor of arts in political science and French from the University of Illinois and a J.D. from Indiana University School of Law. Upon graduation from law school, Colleen clerked for Justice Brent Dickson of the Indiana Supreme Court before going on to practice insurance defense litigation for eight years with the Carmel law firm of Jennings Taylor Wheeler & Haley.

Looking for a new challenge, Colleen became the Communications Director and began serving as defense counsel for the Hoosier Lottery. As Communications Director, she was responsible for the Lottery's three publications, the Web site, and communications on behalf of the Director. Two years later, she added to her responsibilities at the Lottery by also becoming the Director of Administration. As Director of Administration, she was responsible for the operations of the Lottery's fleet, facilities, mail center, procurement and human resources divisions. She also continued to defend the Lottery in litigation up through the appellate level.

Colleen joined the Division of State Court Administration in May 2005.

New Law Requires a GAL/CASA for Every Child in Every CHINS Case

Senate Enrolled Act 529, (Public Law 234), which takes effect on July 1, 2005, requires a court to appoint a guardian ad litem or a court appointed special advocate for every child in every case in which the child is alleged to be a child in need of services (CHINS).

Prior to the change in the law, I.C. 31-34-10-3 required the appointment of a GAL/CASA only in the following categories of CHINS cases:

(1) the child substantially endangers his/her own health or the health of another individual;

(2) the child is born with fetal alcohol syndrome or with any amount, including a trace amount, of a controlled substance or a legend drug in their body;

(3) the child has an injury, an abnormal physical or psychological development, or is at a substantial risk of a life threatening condition that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy;

(4) due to the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with the necessary medical care;

(5) the location of both the child's parents is unknown; and

(6) cases in which the parent, guardian, or custodian of a child denies the allegations of the CHINS petition. The appointment of a GAL/CASA was not mandatory in the most common types of CHINS cases-neglect, physical abuse and sex abuse-unless the parent denied the allegations of the CHINS petition. In 2004, under the prior law, GAL/CASA volunteers were appointed in approximately 54%, or 9,093, of the total CHINS cases in Indiana and in 2,735 termination of parental rights cases.

The new mandatory appointment of a GAL/CASA for every child, along with several other changes that are being implemented by the newly created Indiana Department of Child Services, makes Indiana eligible to apply for, and hopefully to receive, federal CAPTA ("Child Abuse Prevention and Treatment Act") funds. Prior to the enactment of SEA 529, Indiana was the only state that did not comply with the CAPTA requirements and, therefore, was not eligible to receive federal CAPTA funds. Indiana was also the only state that did not have a law requiring representation for every child in every abuse and neglect case either through an attorney, a GAL or a CASA.

During legislative discussion of this law, the Supreme Court Division of State Court Administration, which administers the state GAL/CASA office, provided information to the Legislative Services Agency on the projected fiscal impact of appointing a GAL/CASA in every CHINS case. The fiscal impact statement anticipates an increase of some 9,300 GAL/CASA appointments per year. At an estimated average cost of $450 to $500 per appointment, the fiscal impact statement predicts that the total cost to represent the remaining these children would be between 4.2 to 4.7 million per year.

Each fiscal year, the Supreme Court Division of State Court Administration receives $800,000 in GAL/CASA funding for distribution to county GAL/CASA programs pursuant to a statutory formula and to administer the state GAL/CASA office. The Legislature did not appropriate any additional funds for the implementation of the mandatory appointment provisions.

However, it is estimated that Indiana will receive about one million dollars in federal CAPTA funds as the new law renders Indiana eligible for such funds. The new Director of the Department of Child Services and former Marion County Juvenile Court Judge, James Payne, has indicated to the Chief Justice that he is committing one half of the CAPTA funds that will flow to Indiana for use by the Indiana GAL/CASA program to help Indiana courts offset the cost of implementing the new law.

Leslie Rogers Dunn and Lilia Judson

State Court Jurisdiction and Class Action Fairness Act of 2005

On February 18, 2005, President George W. Bush signed the Class Action Fairness Act of 2005 that expands federal court jurisdiction over class action lawsuits. This Act is the result of more than a six-year effort by the legislation sponsors. The Conference of Chief Justices (CCJ) opposed provisions of previous similar legislation on federalism grounds.

Key portions of the Act exempts from the long-standing "complete diversity" requirement class actions suits with more than 100 plaintiffs in which the total in dispute exceeds $5 million. If at least two-thirds of the plaintiffs live in the primary defendant's home state, the state court retains jurisdiction. If between one-third and two-thirds of the plaintiffs are citizens of the primary defendant's home state, a federal judge would have discretion to remove a class action filed in the state's courts. The Act also imposes limits on attorney fees, particularly in settlements in which the plaintiffs receive non-cash benefits, such as coupons for goods and services. It also establishes criteria for approving proposed settlements in "coupon" cases; prohibits settlements that provide greater recovery to class members solely because they are located closer geographically to the court; and establishes notification requirements to appropriate federal and state officials.

Background

Congressional sponsors of this legislation believe that many class action cases that belong in federal courts are being litigated in state courts. The Act lists several findings that underlie the legislation and recognize the importance and value of class action lawsuits as when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action. But the legislation takes aim at abuses of this type of litigation, including harm to class members with legitimate claims that are not addressed, defendants who have acted responsibly, its adverse impact on interstate commerce, and the overall perception that public respect for our judicial system is being undermined.

The legislation also attempts to correct situations where class members often receive little or no benefit from class actions, and are sometimes harmed, such as where:

attorneys are awarded large fees, while leaving class members with coupons or other awards of little or no value; unjustified awards are made to certain plaintiffs at the expense of other class members; and, confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

Supporters of the legislation argue that the Act prevents attorneys from shopping for jurisdictions that are seen to be particularly friendly to plaintiffs prone to large awards. Opponents contend that by making these suits subject to the Federal Rules of Procedure, which are considered less plaintiff-friendly, the Act could deprive seriously injured plaintiffs of their day in court.

Key Provisions:

Expanded Federal Court Jurisdiction over Class Actions: The heart of the Act amends 28 USCA sec. 1332 by inserting a new subsection (d) that provides: The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which: (A) any member of a class of plaintiffs is a citizen of a State different from any defendant; (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or (C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state.

Exempted from this jurisdiction are class actions solely involving claims that concern: (A) a covered security or the rights, duties, and obligations created by or pursuant to any security; or (B) the internal affairs or

continued on page 11

continued from page 10

governance of a corporation or business enterprise that arise under or by virtue of the laws of the state in which that corporation or enterprise is incorporated or organized.

The Act provides that a district court may decline to exercise this jurisdiction when more than "one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed." However, the judge must consider six factors in determining whether to decline jurisdiction: (1) whether the claims asserted involve matters of national or interstate interest; (2) whether the claims asserted will be governed by the laws of the State in which the action was originally filed or by the laws of other States; (3) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction; (4) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants; (5) whether the number of citizens of the State in which the action was originally filed . . . is substantially larger than the number of citizens from any other State, and the citizenship of the others members of the proposed class is dispersed among a substantial number of States; and

(6) whether, during the 3-year period preceding the filing of that class action, one or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

Limitations on Attorneys Fees: The provisions on attorneys fees focus primarily on those class action settlements in which plaintiffs' recovery is in the form of coupons. The Act subjects all attorney fees in cases involving coupons to approval by the court. In such cases, any attorney fee award to the class counsel must be based "on the value to class members of the coupons that are redeemed" or "on the amount of time class counsel reasonably expended working on the action" including the obtaining of equitable relief. The Act provides further that the court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

(Rewritten with permission from an article by Richard Van Duizend for the Government Relations Office, National Center for State Courts, Vol. 6, No. 1, February 2005)

Food for Thought

The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated.
Hugo Black

Judges rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times.
Warren E. Burger

The penalty for laughing in a courtroom is six months in jail; if it were not for this penalty, the jury would never hear the evidence.
H. L. Mencken

A judge is a law student who marks his own examination papers.
H. L. Mencken

Common Sense is that which judges the things given to it by other senses.
Leonardo Da Vinci

Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.
- Socrates

A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used.
Oliver Wendell Holmes, Jr.

A union of government and religion tends to destroy government and degrade religion.

In This Issue

Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

If you would like to receive this newsletter via e-mail, or by accessing our website, please send a message to dguthrie@courts.state.in.us to have your name added to our electronic list and removed from our hardcopy mailing list.

Please Circulate to Co-workers

This newsletter reports on important administrative matters. Please keep for future reference.

Indiana Court Times

Indiana Supreme Court
Division of State Court Administration
115 W Washington Street, Suite 1080
Indianapolis IN 46204-3466